

*Rt. Hon. Speaker,
You may approve.
anastasiu
6/3/24*



REPUBLIC OF KENYA

*Approved
SNA
6/3/24*

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT (THIRD SESSION)

PUBLIC PETITION

(No. 06 of 2024)

REGARDING DELAYS IN POSTING MEDICAL INTERNS, ABSORPTION OF UNIVERSAL HEALTH COVERAGE (UHC) CONTRACT STAFF, CONCLUSION OF COLLECTIVE BARGAINING AGREEMENTS (CBAs), AND RECOGNITION AGREEMENTS IN THE HEALTH SECTOR IN THE COUNTRY

I, the **UNDERSIGNED**, on behalf of the representatives of the Health Sector Unions, Societies and Associations;

DRAW the attention of the House to the following: -

1. **THAT**, quality healthcare is the lifeline of a country's prosperity and that the maintenance of an appropriate complement of medical practitioners under suitable terms and conditions is fundamental to quality healthcare;
2. **THAT**, Articles 27 and 41 of the Constitution of Kenya as read together with the Employment Act, 2007 provide for the rights of employees and fair labour practices;
3. **THAT**, the African Charter on Human and People's Rights entitles everyone to equal protection of the law including the right to the respect of the dignity inherent in a human being and the right to receive information and to express and disseminate their opinions within the law;
4. **THAT**, despite the elaborate safeguards in international law, the Constitution and statutes, medical practitioners in Kenya have been subjected to unfair labour practices, which have heightened since 2020;
5. **THAT**, in April 2020, following the outbreak of COVID-19, the Government recruited a number of health workers on one-year Universal Health Coverage (UHC) internship contracts to boost efforts on achievement of Universal Health as well as to aid in the fight against COVID-19.

NATIONAL ASSEMBLY
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11842, NAIROBI

PUBLIC PETITION

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6. **THAT**, the contracted health workers were released from service after one year, yet they had already been assigned personal numbers in the Ministry of Health. Their exit created a shortage that is yet to be addressed and has also made it hard for them to get any other employment in the public service since they are deemed to be in employment because they have personal numbers;
7. **THAT**, the country's Public Service Commission, the Human Resource Policies and Procedures Manual for the Public Service (2016) recognize public sector internship programs, which is both a legal requirement and prerequisite for licensure and independent practice in the case of medical practitioners;
8. **THAT**, whereas the Ministry of Health has a duty to facilitate posting of graduate medical practitioners for mandatory internship, it is yet to post medical interns who ought to have been posted in September 2023;
9. **THAT**, further, the Ministry, which is obligated to compensate medical interns through a standardised salary/stipend, has been applying different terms. For instance, while all other interns are paid based on a job group in the health sector, Diploma Clinical Officers are only paid a meagre allowance that can hardly cater to their basic needs during the internship period;
10. **THAT**, the health staff under UHC contract have been earning a salary equivalent to half of what their colleagues employed under county governments have been earning despite working in the same environment;
11. **THAT**, the delayed internship posting and subsequent licensure deny affected graduates the opportunity to get exposure to uninterrupted skills' mastery that would equip them to contribute to health service delivery in the country;
12. **THAT**, the plight of intern graduates remains unresolved despite recommendations by the Senate for absorption of UHC and other staff contracted during COVID-19. Further that the *Kericho Declaration Agreement* signed on 18th October 2023 by the medical staff Unions, the Ministry of Health and Council of Governors committed the Ministry of Health and Council of Governors to facilitate absorption and mainstreaming of national government contract staff, including the COVID-19/UHC staff into employment;

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- 13. THAT**, the health workers currently under the UHC program are about three months to the end of their one-year extension, yet both county governments and the national government have not shown any plans of transitioning them and converting their terms of service to permanent employment as per the *Kericho Declaration*;
- 14. THAT**, further, the health workers under UHC contract have not received gratuities for their previous three-year terms served and no communication regarding the reasons for the delay and when to expect the said gratuities;
- 15. THAT**, while all other unions in other sectors have concluded Collective Bargaining Agreements (CBAs) with their respective employers, the unions in the health sector have been subjected to frustrations and what appears to be deliberate intent to deny them their right to the CBAs;
- 16. THAT**, Petitioners' efforts to resolve these matters with Ministry of Health and other relevant bodied have not fruitful despite their numerous requests for audience and engagements;
- 17. THAT**, the matter presented in this petition is not pending before any Court of law or any constitutional or legal body.

THEREFORE, your humble Petitioners pray that the National Assembly through the Public Petitions Committee –

- (i) Investigates the reasons for the failure by the Ministry of Health to facilitate the posting of graduate interns for mandatory internship since September 2023 and recommends immediate posting of the affected interns and institution of measures to avert in internship posting henceforth;
- (ii) Inquires into the circumstances surrounding the failure by the Ministry of Health to transition health workers contracted under the Universal Health Coverage (UHC) in 2020 to permanent and pensionable terms in accordance with the Kericho agreement of 18th September 2023;

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- (iii) Intervenes to cause the Ministry of Health to absorb all the Universal Health Coverage (UHC) health workers and other contracted health workers into permanent or pensionable service in order to address the acute shortage in the health sector;
 - (iv) Recommends to the Ministry to immediately address discriminatory disparities in compensation of medical interns and instead apply fair remuneration as per the Salaries and Remuneration Commission terms pegged on job grades;
 - (v) Recommends that the pending Collective Bargaining Agreements (CBAs) and Recognition Agreements be concluded expeditiously; and,
 - (vi) Makes any other recommendations it deems fit in addressing the plight of the Petitioners.
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And your **PETITIONER** will ever pray.

PRESENTED BY:

THE HON. (DR.) ROBERT PUKOSE, CBS, MP
MEMBER FOR ENDEBESS CONSTITUENCY

DATE:



HEALTH UNION CAUCUS

4th March 2024

The Speaker of the National Assembly,
Parliament Building,
P.O Box 41842-00100
Nairobi, Kenya.

Through;
The Clerk of the National Assembly,
Nairobi, Kenya.

① DLPS
Please deal.
SGL
05/03/24
② Head, HR
Kwaly process
05/2/24

RE: PETITION ON DELAYING IN ABSORBING UHC STAFF, DELAY IN INTERNSHIP POSTING, DELAY IN CONCLUSION OF CBAs/RAs & VICTIMIZATION OF UNION OFFICIALS.

WE, the duly registered Health Sector Unions, Associations and Societies with a constitutional and legal mandate of championing the Labour interest and professional welfare of all Health Workers employed by both levels of Government, being Citizens of the Republic of Kenya, and Authorized Representatives/Officials; TOGETHER with UHC staff and Interns who have sort our representation.

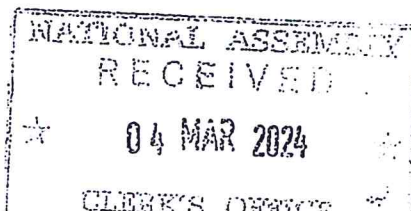
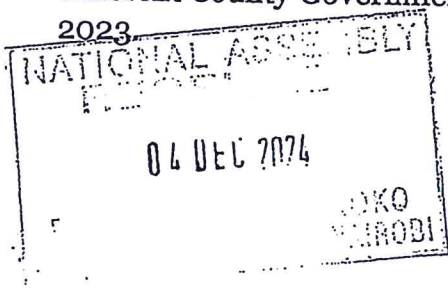
DRAW the attention of the National Assembly to the following:

THAT:

- In April 2020, a group of health workers were recruited Under one-year Universal Health Coverage internship contract to boost efforts on achievement of Universal Health as well aid in the fight against COVID19.
- They were given personal numbers but released from service after one year of service leaving a shortage that remains uncovered to date in their previous work stations.
- They are unable to get any other employment in public service since they have personal numbers under the Ministry of Health.

THAT;

- In June 2020, at the height of COVID19 pandemic, the Ministry of Health employed about 8,550 on a three-year UHC contract and deployed them in different County Government(s). Their contracts are coming to an end in May



- The UHC staff have been diligently providing critical health services across the country since they were engaged.
- These contracts attracted a consolidated salary that have seen them earn half of what their peers earn working in the s
- These staff are disturbed and demotivated by these development as they had valid expectations that they would have been absorbed on permanent and pensionable terms or their remuneration improved to be equal with their peers whom they work together under same conditions but earning differently.

THAT;

- Article 259 of the Constitution of Kenya provides that the Constitution must be interpreted in a manner that promotes its purposes, values and principles; advances the rule of law and human rights and fundamental freedoms in the Bill of Rights. Permits the development of the law and contributes to good governance.

THAT;

- Article 41 of the Constitution of Kenya, 2010, we are entitled to constitutional privileges of Fair Labour Practices; this being a Human Right. The article reads in part: 41. Labour relations (1) Every person has the right to fair Labour practices. (2) Every worker has the right— (a) to fair remuneration; ...
- Internship contract is recognized under employment act as a contract of service under apprenticeship of indentured learnership and therefore entitled to enjoy the protection of article 41 of the constitution.
- Both UHC staff and interns submit that they have suffered unfair remuneration as their remuneration has not followed the principle of “equal pay for equal work”.
- This act is not only unfair but discriminatory in nature and goes against the doctrine of fair labour practice ordained in Article 41 of the Constitution of Kenya, 2010 as well as the Employment Act No.11 (2007) Laws of Kenya on fair labour practice and discrimination.

THAT;

- Both Article 27 of the Constitution and Section 5 of the Act prohibit discrimination on the basis of race, colour, sex, language, religion, political or other opinion, nationality, ethnic or social origin, disability, pregnancy, marital status or HIV status.
- Section 5(7) of the Act provides that when discrimination has been alleged by an employee, the burden of proof shifts to the employer who must show that it did not take place.
- According to the Constitution of Kenya, all human beings are born equal and are equal before the law.
- Section 5 of the Employment Act provides that it's illegal to discriminate in any facet of employment.

- It also provides that an employer shall promote equal opportunities in employment and shall ensure that policies and practices of the organization discourage discrimination.
- The law disallows discrimination in the process of recruitment, training, promotion, terms and conditions of employment, termination of employment and other matters related to employment.

THAT;

- The Public Service Commission, Human Resource Policies and Procedures Manual for the Public Service May, 2016 recognizes the establishment, initiation and management of the Internship programs in Kenya. The same that states inter-alia;

(3) Internship programmes shall be guided by the relevant provisions of the Constitution, relevant professional bodies and other policy guidelines and shall not exceed one (1) year.

THAT;

- The internship is a legal requirement and a prerequisite for licensure and independent practice. The ministry of health is mandated to ensure that these officers are facilitated by posting to internship centres and paying their salary/stipend.
- These interns were supposed to be posted in September 2023 but this has not happened to date.
- Also, while all other interns are paid using a job group in the health sector, diploma Clinical Officers are only paid a meagre allowance that can't cater to their basic needs during the internship.
- Delay in internship posting delays licensure and therefore creates anxiety, denies the graduates opportunity to work and contribute to health service delivery as well as interruption of skills mastery process which impacts on the quality of health services delivered in future.

THAT;

- The African Charter on Human and People's Rights, to which Kenya became a state party on 23rd January 1992 and in particular Article 3(2) which provides that every person is entitled to equal protection of the law.
- Article 5 which provides that every individual shall have the right to the respect of the dignity inherent in a human being;
- Article 9 which provides that every individual shall have the right to receive information and to express disseminate his opinions within the law.

THAT;

- Our efforts to resolve these matters with Ministry of health have not yielded since our letters and request for audience to discuss have not been responded to.

THAT;

- The Senate gave a report recommending for absorption of UHC and other staff contracted during COVID 19.

THAT;

- On 18th October 2023, the Unions, MoH and Council of Governors signed the KERICHO DECLARATION where it was agreed that the MoH and CoG would *“Facilitate absorption and mainstreaming of national government contract staff (including COVID19/UHC staff), and engaging COG to develop a clear plan for absorbing other contract staff.”*
- The health workers under UHC program are about three months shy to the end of their one-year extension yet both County government and the national government have not shown any plans of transitioning and translating their terms of service as per the agreement made in THE KERICHO DECLARATION (BULLET #10) On 20th of October 2023.
- The health workers under UHC contract have not received the gratuities for their previous three-year term served. Further, there is no any communication from their employer about when to receive the said gratuities. Despite issue being Gazetted on the gazette notice number 8091 dated 12th of October 2020.
- The health staff under UHC contract have been earning a salary equivalent to half of what their fellow colleagues employed under county government have been earning despite working in the same environment. They pray for fair remuneration as per the salaries and remuneration commission terms.

THAT;

- While all other unions in other sectors have concluded CBAs with their respective employers, Unions in health sector have only been subjected to frustrations and deliberate delays to deny them their right to CBAs.

In view of the foregoing, we DEMAND:

THAT;

The NaMinistry of Health and Council of Governors;

- 1. Absorbs the Universal health workers and all contracted health workers into permanent or pensionable establishment,**
- 2. Immediately posts interns, takes measures to end delays in internship posting henceforth and pay internship on a job grade for all interns without discrimination.**
- 3. The pending Collective Bargaining Agreements and Recognition Agreements be concluded within the next 14 days**

THAT;

4. All third-party deductions for UHC staff including NSSF, NHIF, LOANS and be remitted immediately but not later than the next 14 days.

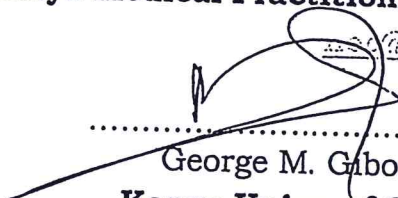
Dated & signed at NAIROBI this 4th day of March 2024.

Signed For and on behalf of Health Sector Unions, Societies and Associations;



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Dr. Davji Bhimji Atellah - General Secretary
Kenya Medical Practitioners and Dentists Union (KMPDU)

info@kmpdu.org



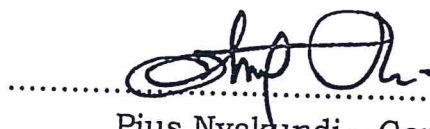
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For ~~the~~

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Pius Nyakundi - General Secretary
Kenya National Union Medical Laboratory Officers (KNUMLO)

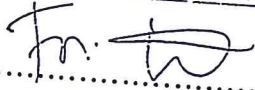
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Elias Mutuma - General Secretary

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Brown Ashira
Kenya Environmental and Public Health Practitioners Union (KEPHPU)

